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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,827	04/15/2004	Claude Ray		7739

33376 7590 10/22/2007

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EXAMINER	
REESE, DAVID C	
ART UNIT	PAPER NUMBER
3677	

MAIL DATE	DELIVERY MODE
10/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/824,827	RAY ET AL.	
	Examiner	Art Unit	
	David C. Reese	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-20* is/are pending in the application.

4a) Of the above claim(s) *15 and 16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-14,17,19 and 20* is/are rejected.

7)☒ Claim(s) *18* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In view of the appeal brief filed on 7/31/2007, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

PATRICIA ENGLE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

- Claims 15-16 are withdrawn (see below).
- Claims 11-20 are pending.

Election/Restrictions

[1] After further examination of the instant case, it has become apparent to the examiner that the species elected by applicant on 4/14/2005 of figures 3-5 and 6 do not read onto claims 15-16 of the current claims listing. Said claims call for a casing having an outer edge with an indention thereon (claim 15) and a switch hingedly secured at a first end to said housing (claim 16); both features of which are drawn to the non-elected species of figures 1-2.

Consequently, the drawing and 112 rejections (with regard to showing claimed subject matter) as articulated earlier in prosecution have thus been rescinded (see below), but however, since claims 15-16 are directed to a non-elected species (figures 1-2 and 6), the examiner has withdrawn claims 15-16.

Drawings

[2] The drawing(s) were previously objected for informalities. All previous objection(s) to the drawings have been withdrawn.

Claim Rejections - 35 USC § 112

[3] Examiner has withdrawn the 35 USC § 112 rejections with regard to claims 15-16, and 18.

Claim Objections

[4] Claim(s) 6 were previously objected to because of informalities. Applicant has successfully addressed these issues. Accordingly, the objection(s) to the claim(s) 6 have been withdrawn.

Claim Rejections - 35 USC § 103

[5] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

[6] Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albanese, US-4,764,850, in view of Boyle et al., US-6,592,423.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to

a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 11 Albanese teaches of a jewelry item with a rotating gemstone comprising:

a substantially hollow housing (22) having an upper end (25) and a lower end (24);

a bezel (42) rotatably mounted on the upper end of said housing (via 18);

a gemstone (20) mounted on said bezel (42);

a motor means (30) received within said housing (22) for automatically rotating said bezel and said gemstone at a predetermined, discrete speed;

a gear assembly (32, 33) including a plurality of gears (32, 33) driven by said motor means (30) and operably connected to said bezel (42), said gears (32, 33) having a predetermined, precise gear ratio for rotating said bezel at a discrete speed,

a drive gear (32) connected to said means (30); and a bezel gear (33) connected (via 18) to said bezel (42).

The difference between the claim and Albanese is that Albanese does not expressly state of an intermediate gear in conjunction with the drive gear and bezel gear (via a sprocket). Boyle et al. teaches of a rotating device including a motor means and gear assembly (see figures 2-5) similar to that of Albanese. In addition, Boyle et al. further teaches of a drive gear (62) connected to said motor means (26); an intermediate gear (64 in fig. 5) engaging said drive gear (62), said intermediate gear (64) having an upper surface with a sprocket (66) extending therefrom and a bezel gear (68) connected (via 74) to a top securing member (76). Thus, it would have been obvious to a person or ordinary skill in the art to try the gear configuration as presented by Boyle et al. in an attempt to provide an improved and/or alternative gear ratio, as a

person with ordinary skill has good reason to pursue the known options within his or her technical grasp. In turn, because the product as claimed has the properties predicted by the prior art, and in order to gain the commonly understood benefits of such a modification, such as producing a suitable torque for rotation of a bezel or other item, it would have been obvious to modify or substitute the gear assembly of Albanese with that taught by Boyle et al.

Re: Claim 12, Albanese teaches wherein said discrete speed is between 2 and 4 revolutions per minute (from column 3, line 12, "gearing to a range of 2 rmps to 3 rpms").

[7] Claims 17, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albanese, US-4,764,850, in view of Boyle et al., US-6,592,423, and in further view of Hartman, US-5,971,829.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 13, Albanese in view of Boyle et al., teach of the above claims.

The difference between the claim and Albanese in view of Boyle et al. is the claim recites of a lower spacer plate superimposed on said drive gear, said spacer plate having an aperture with said drive gear received therein (claim 17); wherein said lower spacer plate includes a depression thereon that receives said intermediate gear (claim 19); and an upper spacer plate superimposed on said lower spacer plate with said intermediate gear positioned therebetween. Hartman teaches of a motorized, rotational device similar to that of Albanese in view of Boyle et

al. In addition, Hartman teaches of a both a lower (21b) and upper (21a) spacer plate, said plates (21b, 21a) superimposed upon one another, with a drive gear (24) received in an aperture (36b) of the lower spacer plate (21b) and an intermediate gear (28a) positioned between the upper (21a) and lower (21b) spacer plate. It would have been obvious to one of ordinary skill in the art, having the disclosures of Albanese in view of Boyle et al. and Hartman before him at the time the invention was made, to modify or add lower and upper spacer plates to that surrounding the gear assemblies within the housing of said motorized, rotational device. One would be motivated to make such a modification since such a configuration allows for, as Hartman states in col. 3, lines 46-47, "which support and contain" the circuit and drive mechanisms. Further, it would have been obvious to a person of ordinary skill in the art to add plates, as presented by Hartman in an attempt to provide an improved structural foundation for the gear assemblies and the structural nature of the motorized device as a whole, as a person with ordinary skill has good reason to pursue the known options within his or her technical grasp. In turn, because the product as claimed has the properties predicted by the prior art, and in order to gain the commonly understood benefits of such a modification, such as producing additional support for the gears and device, it would have been obvious to modify or insert plates into Albanese as presented by Hartman. Lastly, with the introduction of lower and upper spacer plates to Albanese in view of Boyle as stated above, it would also have been obvious to one skilled in the art to have the intermediate gear fitted within an depression within the lower spacer plate, in order to gain the commonly understood benefits of such a modification, such as decrease sizes, increased reliability and support, and simplified operation of the intermediate gear.

[8] Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albanese, US-4,764,850, in view of Boyle et al., US-6,592,423, and in further view of Marshall, US-6,209,242.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 13, Albanese in view of Boyle et al., teach of the above claims.

The difference between the claim and Albanese in view of Boyle et al. is the claim recites that the motor means includes a quartz movement motor. Marshall discloses a rotating display for jewelry (col. 2, lines 50-54) similar to that of Albanese in view of Boyle et al. In addition, Marshall further teaches of using a quartz movement motor for the motor means of the instant invention. It would have been obvious to one of ordinary skill in the art, having the disclosures of Albanese in view of Boyle et al. and Marshall before him at the time the invention was made, to modify the motor means of Albanese in view of Boyle et al. to include a quartz movement motor as in Marshall. One would have been motivated to make such a combination because first, such a motor means is extremely old and well known in the jewelry art, especially with regard to watches and other rotational devices. There are many reasons to use a quartz movement motor for motor means of a given rotational device. Some example of which, as taught by Marshall, in col. 1, include a need for a rotating display which can be manufactured and utilized at a low cost in order to employ a multiplicity of such displays in a jewelry case or window. Marshall also

states that there is further a need for a rotating display which takes advantage of piezo electricity and which can be aesthetically pleasing in a jewelry case or window. Marshall further teaches that solar cell panels (such as the one taught by Albanese) are not aesthetically pleasing enough for the desired uses. Finally, Marshall also teaches another advantage of using a quartz movement motor is that the accuracy of movement created by the quartz oscillators may be taken advantage of in motorized jewelry displays by synchronizing displays.

Re: Claim 14, Marshall teaches wherein said motor means further comprises an integrated circuit (col. 2, beginning with line 61) [for controlling speed and torque of said quartz movement motor].

Allowable Subject Matter

[9] Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As for Claim 18, the prior art, incorporating other corresponding limitations as set forth above, does not teach of the structural/functional relationship between the bezel, the slot at the bottom of the bezel, the lip and neck; whereby when the bezel is overtop the shroud (lip and neck) the two pieces are held together by a clip that passes through the slot of the bezel and attaches to the neck of the shroud.

Response to Arguments

[10] Applicant's amendment, see amendment and remarks filed 7/31/2007, with respect to the rejection(s)of claim(s) under Blume; then Albanese in view of Hartman have been fully considered. Therefore, the rejection with regard to Blume; and Albanese in view of Hartman has

been withdrawn. However, upon further consideration of the claims, a new ground(s) of rejection is made in view of Albanese, US-4,764,850, in view of Boyle et al., US-6,592,423; then in view of Hartman, and Marshall. Consequently, all arguments are considered moot to said new grounds of rejection. Please also note the additional notice of reference cited.

Conclusion

[11] THIS ACTION IS NON-FINAL

[12] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DCR

Flemming Saether
Primary Examiner